

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No.

v.

S.H. BELL COMPANY,

Defendant.

CONSENT DECREE

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this action against Defendant, S.H. Bell Company (“S.H. Bell” or “Settling Defendant”), pursuant to Section 113 of the Clean Air Act (“CAA ” or “Act”), 42 U.S.C. § 7413, for violations of the CAA;

WHEREAS, the United States’ Complaint alleges violations by S.H. Bell of the Ohio State Implementation Plan (“SIP”), the General Provisions of the New Source Performance Standards (“NSPS”) set forth at 40 C.F.R. § 60.7 and 60.8, and S.H. Bell’s failure to timely submit an appropriate permit application as required by Sections 503 (a) and (c) of the CAA, 42 U.S.C. §§ 7661b (a) and (c), and 40 C.F.R. § 70.5(a), and seeks civil penalties for these alleged violations of the CAA;

WHEREAS, the United States previously issued a Notice of Violation (“NOV”) to S.H. Bell dated May 25, 2001 and also issued a Findings of Violation (“FOV”) to S.H. Bell dated May 25, 2001, **both pursuant to Section 113 of the CAA, 42 U.S.C. § 7413,** regarding the Stateline Terminal and the Little England Terminal;

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WHEREAS, Settling Defendant is a corporation organized under the laws of the State of Pennsylvania (“Pennsylvania”), is registered as a domestic corporation doing business in Pennsylvania, and is registered as a foreign corporation duly licensed to do business in the State of Ohio (“Ohio”), and is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e);

WHEREAS, S.H. Bell owns and operates two terminals near East Liverpool, Ohio, one located at ~~2219~~ 2217 Michigan Avenue (the “Stateline Terminal”) and the other located at 1 Saint George Street (the “Little England Terminal”) for storage, handling and processing of ferrous and nonferrous materials for industry. Plaintiff alleges in the Complaint that the Stateline Terminal and Little England Terminal, collectively, constitute a “Facility” under the Act;

WHEREAS, Plaintiff alleges that S.H. Bell has operated sources of air pollution at the Little England Terminal and the Ohio portion of its Stateline Terminal since October 1, 1996, and continues to operate such sources, without having timely obtained the appropriate operating permits for the Facilities from the State of Ohio as required under Section 502(a) of the Act, 42 U.S.C. § 7661a(a), federal regulations, 40 C.F.R. § 70.5, and/or the Ohio State Implementation Plan (“Ohio SIP”), Ohio Administrative Code (“OAC”) 3745-35-02;

WHEREAS, Plaintiff alleges that S.H. Bell has operated sources at the Pennsylvania portion of its Stateline Terminal since August 29, 1997, and continues to operate such sources, without having timely obtained the appropriate operating permit for the Stateline Terminal as required by Section 502(a) of the Act, 42 U.S.C. § 7661a(a), federal regulations, 40 C.F.R. § 70.5, and/or the Pennsylvania State Implementation Plan

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(“Pennsylvania SIP”), at Pennsylvania Code (“PA Code”), 25 PA Code, Chapter 127, Subchapter F;

WHEREAS on August 29, 2002, S.H. Bell submitted to the Ohio Environmental Protection Agency (“Ohio EPA”), a Federally Enforceable State Operating Permit (FESOP) application pursuant to the Ohio Administrative Code (“OAC”) 3745-35-02 and -07 for the stationary sources on the Ohio side of the Stateline Terminal and a minor source facility operating permit for stationary sources at the Little England Terminal, which applications are pending with the Ohio EPA;

WHEREAS on August 29, 2002, S.H. Bell submitted to the Pennsylvania Department of Environmental Protection (“Pennsylvania DEP”), a FESOP application pursuant to 25 PA Code ch. 127, Subchapter B, for the stationary sources at the Stateline Terminal located in Pennsylvania, which application is pending with the Pennsylvania DEP;

WHEREAS, Plaintiff alleges that S.H. Bell installed a Boxing and Bagging System at its Little England Terminal in 1997, and failed to apply for and obtain a Permit to Install (“PTI”) for its Boxing and Bagging System before installation of the System, in violation of OAC 3745-31-02, part of the federally approved and enforceable Ohio SIP;

WHEREAS, Plaintiff alleges that S.H. Bell did not install the baghouse on the Hammermill at the Little England Terminal of its East Liverpool Facility until May 2001 under the PTI for the Hammermill issued by the Ohio EPA on December 1, 1999, pursuant to OAC 3745-31-10, part of the federally approved and enforceable Ohio SIP, and in violation of the terms of its PTI and pursuant to 40 C.F.R. § 52.23 OAC 3745-31-10, part of the federally approved and enforceable Ohio SIP;

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WHEREAS, Plaintiff alleges that S.H. Bell constructed, reconstructed, and/or modified its Hammermill Crushing System at the Little England Terminal after August 31, 1983, which Hammermill Crushing System was used for crushing and grinding the nonmetallic mineral fluorspar until at least July 2001, and consists of 3 Conveyors, a Double Deck Screen, a Storage Bin, and a Hammermill; and each of which operating units is an “affected facility” within the meaning of 40 C.F.R. § 60.670;

WHEREAS, Plaintiff alleges that S.H. Bell violated the General Provisions, 40 C.F.R. § 60.670, Subpart OOO, of the New Source Performance Standards (“NSPS”), at 40 C.F.R. §§ 60.7(a)(1) and 60.7(a)(3) for the Hammermill Crushing System by failing to file with the Administrator **of the EPA** an initial notification of the date construction, reconstruction, or modification was commenced, by failing to file a notification of the initial startup of the Hammermill Crushing System, and by failing to conduct the required initial testing within 180 days of the initial startup of the Hammermill Crushing System;

WHEREAS the United States and the Settling Defendant have agreed that settlement of this action is in the best interest of the Parties and in the public interest and have further agreed that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS Settling Defendant **does not, by entering into this Consent Decree, admit any liability or the validity of any facts or conclusions of law** ~~neither admits nor denies the factual allegations and violations alleged~~ arising out of the transactions or occurrences alleged in the Complaint; and

WHEREAS the United States and S.H. Bell (the "Parties") recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been

negotiated by the Parties in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties,
IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b), (c) and 1395(a), because Settling Defendant resides, and conducts business, in this district and because the majority of the alleged violations occurred within this district. For purposes of this Decree, Settling Defendant does not contest the Court's jurisdiction over this action or over Settling Defendant and does not contest venue in this judicial district.

2. The Complaint states claims upon which relief may be granted pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413.

3. Notice of commencement of this action has been given to the State of Ohio, specifically, the Director, Ohio EPA, by letter dated April 18, 2006, and to the State of Pennsylvania, specifically, the Director, Pennsylvania DEP, by letter dated April 19, 2006, as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. This Consent Decree applies to and is binding upon the United States; upon Settling Defendant, acting through its officers, directors, employees, and agents; upon Settling Defendant's officers, directors, and employees, acting in their capacities as officers, directors, and employees; and upon Settling Defendant's successors and assigns.

~~5. — At least thirty (30) days prior to transferring ownership or operation of the Facility to any other person, Settling Defendant shall provide a copy of this Consent Decree to each prospective successor owner or operator and shall simultaneously verify such by a written notice to EPA Region 5, the United States Attorney for the Northern District of Ohio, and the United States Department of Justice, in accordance with Section XVI of this Decree (Notices).~~

6. 5. No transfer of ownership or operation of the Facility, whether in compliance with procedures of this Paragraph or otherwise, shall relieve S.H. Bell of its obligation to ensure that the terms of this Consent Decree are implemented unless: a) the transferee agrees to undertake the obligations required by this Consent Decree and to be substituted for S.H. Bell as Defendant under the Consent Decree, and be bound by the terms thereof; and b) the United States consents to relieve S.H. Bell of its obligations. At least 30 days prior to such transfer, S.H. Bell shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the proposed transfer, together with a copy of the proposed Court Order substituting the transferee as Defendant to EPA Region 5, the United States Attorney for the Northern District of Ohio, and the United States Department of Justice, in accordance with Section XVI of this Decree (Notices).

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7 6. Settling Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, [Bookmark] as well as to any contractor retained to perform work required under this Consent Decree and shall condition all contracts entered into hereunder upon performance of the work in conformity with the terms of this Consent Decree.

8 7. In any action to enforce this Consent Decree, Settling Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree, provided, however, that nothing in this Paragraph shall limit the applicability of Section X (Force Majeure) of this Consent Decree to the extent that any such failure is, or is attributed, to a Force Majeure event as defined in Paragraph 40 39.

III. DEFINITIONS

9 8. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the Act or in regulations promulgated pursuant to the Act, shall have the meaning assigned to them in the Act and such regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Act ” or “CAA ” means the Clean Air Act, as amended, 42 U.S.C. §§ 7401 -7671q.
- b. “Complaint” shall mean the Complaint filed by the United States in this action;

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- c. “Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXV) and all amendments and modifications;
- d. “Day” shall mean a calendar day unless expressly stated to be a Working Day. “Working Day” means a day other than a Saturday, Sunday or federal or State holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;
- e. “Effective Date” shall mean the date of entry of this Decree by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7, pursuant to Paragraph ~~65~~ 64 of this Decree;
- f. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;
- g. “Interest” shall mean interest at the rate specified for a money judgment in a civil case recovered in a district court pursuant to 28 U.S.C. § 1961;
- h. “Little England Terminal” shall mean Settling Defendant’s terminal for the storage, handling and processing of ferrous and nonferrous materials at 1 Saint George Street, East Liverpool, Ohio.
- i. “NSR” means the nonattainment New Source Review program of Part D of Subchapter I of the CAA, 42 U.S.C. §§ 7501-7515, and 40 C.F.R. Part 52, Subpart KK.
- j. “Ohio EPA” shall mean the Ohio Environmental Protection Agency;

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- k. “Ohio State Implementation Plan” or “Ohio SIP” means the federally approved and enforceable plan adopted by the State of Ohio pursuant to Section 110 of the CAA, 42 U.S.C. § 7410.
- l. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;
- m. “Parties” shall mean the United States and Settling Defendant;
- n. “Pennsylvania DEP” shall mean the Pennsylvania Department of Environmental Protection;
- o. “Pennsylvania State Implementation Plan” or “Pennsylvania SIP” shall mean the federally approved and enforceable plan adopted by the State of Pennsylvania pursuant to Section 110 of the CAA, 42 U.S.C. § 7410;
- p. “PSD” means the Prevention of Significant Deterioration program within the meaning of Part C of Subchapter I of the CAA, 42 U.S.C. §§ 7470-7492, and 40 C.F.R. Part 52.
- q. “Section” shall mean a portion of this Decree identified by a roman numeral;
- r. “Settling Defendant” shall mean S.H. Bell Company;
- s. “Stateline Terminal” shall mean Settling Defendant’s terminal for the storage, handling and processing of ferrous and nonferrous materials at 2219 Michigan Avenue, East Liverpool, Ohio, and includes contiguous property located in Pennsylvania; and
- t. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

~~10~~ 9. No later than thirty (30) days after the Effective Date of this Consent Decree, Settling Defendant shall pay a civil penalty in the amount of FIFTY THOUSAND DOLLARS (\$50,000) to the United States of America ~~plus Interest accrued from the date of lodging of this Consent Decree.~~ Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U. S. Department of Justice in accordance with instructions to be provided to Settling Defendant upon entry of the Consent Decree by the Financial Litigation Unit (“FLU”) of the U. S. Attorney’s Office for the Northern District of Ohio. Any EFTs received at the DOJ lockbox bank after 11:00 a.m. Eastern Time will be credited on the next business day. At the time of payment, Settling Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation, which should reference USAO file number [] and DOJ case number 90-5-2-1-07823, to the United States in accordance with Section XVI of this Decree (Notices).

~~11~~ 10. (a) In accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717, and 40 C.F.R. § 13.11, Settling Defendant shall be subject to Interest charges in the event of late payment of the civil penalty required to be paid under this Section or stipulated penalties required to be paid under Section IX, below. Settling Defendant shall pay an Interest charge on any unpaid penalties that are due and payable under this Section or Section IX at the rate of the current value of funds to the U.S. Treasury (i.e., the Treasury tax and loan account rate), ~~which shall begin to accrue accruing~~ on the date payment was due ~~and payable beginning on the 31st day after payment was due, unless paid prior to that date~~ **and shall be paid at the time payment of the penalty is made.**

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(b) Upon entry, this Consent Decree will constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The United States will be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and Interest. The United States shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the civil penalty, stipulated penalty and Interest.

~~42~~ 11. Civil penalties paid pursuant to this Consent Decree shall not be deductible for purposes of Federal taxes.

V. COMPLIANCE MEASURES

~~43~~ 12. Settling Defendant shall cooperate ~~fully~~ with Ohio EPA and/or Pennsylvania DEP with respect to these Agencies' processing of S.H. Bell's August 29, 2002 facility operating permit applications, and shall promptly comply with all ~~reasonable~~ requests for information, monitoring, testing and reporting made by these Agencies with respect to S.H. Bell's application. Nothing in this Paragraph shall be construed to limit Settling Defendant's rights to appeal, under the Ohio SIP and/or Pennsylvania SIP, any determinations made by the Ohio EPA and/or Pennsylvania DEP with respect to S.H. Bell's August 29, 2002 facility operating permit applications, or any amendments thereto. **If Settling Defendant appeals any disputed terms and conditions imposed by Ohio EPA and/or Pennsylvania DEP, Settling Defendant shall prosecute such appeals in an expeditious fashion and** ~~Settling Defendant~~ shall comply with any **final** permits ~~issued by~~ **obtained from** the Ohio EPA and Pennsylvania DEP pursuant to

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Settling Defendant's FESOP applications at the Stateline Terminal and minor source facility operating permit application at the Little England Terminal.

~~14~~ 13. Settling Defendant has represented that it no longer ~~processes~~, crushes or grinds any nonmetallic minerals, and therefore, 40 C.F.R. Part 60, Subpart OOO no longer applies to either the Stateline Terminal or the Little England Terminal. In the event Settling Defendant resumes or begins to ~~process~~, crush or grind nonmetallic minerals at either the Stateline Terminal or the Little England Terminal, Settling Defendant agrees that 40 C.F.R. Part 60, Subpart OOO shall apply to all of its affected facilities, and in this event, Settling Defendant shall immediately comply with all applicable requirements of 40 C.F.R. Part 60, Subpart OOO, and the Ohio SIP and Pennsylvania SIP.

VI. PSD AND MAJOR NONATTAINMENT CREDITS

~~15~~ 14. Emissions reductions from any Supplemental Environmental Project ("SEP") conducted pursuant to this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting credit or offsets under the Clean Air Act's Nonattainment NSR and PSD programs. However, nothing in this Paragraph of the Consent Decree shall be construed to limit the generation and use of emissions offsets or credits for emissions reductions that are either greater than the emissions reductions generated by the SEPs and removed from the State of Ohio emissions inventory through this Consent Decree or achieved from sources not covered under the Consent Decree, or respecting reductions of any other pollutant at any source owned and operated by Settling Defendant.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

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~~46~~ 15. Settling Defendant shall construct and implement a Supplemental Environmental Project (“SEP”), consisting of a Truck Loadout Shed controlled by a baghouse air pollution control device on the Ohio side of the Stateline terminal in conjunction with a Road Paving Project (“Truck Loadout Shed/Road Paving SEP”), in accordance with all provisions of Appendix A to this Consent Decree, which is attached hereto and incorporated into this Decree by reference. The Truck Loadout Shed/Road Paving SEP shall be fully completed within 33 weeks after the later of: a) the effective date of this Consent Decree, or b) the effective date of appropriate permits from Ohio EPA to construct the air pollution control device. [Bookmark] The Truck Loadout Shed portion of the Truck Loadout Shed/Road Paving SEP involves the capture and control of particulate emissions (TSP and PM-10) generated from the transfer of outgoing product at the Ohio side of the Stateline Terminal. The Road Paving portion of the Truck Loadout Shed/Road Paving SEP involves the paving of two sections of road in the area of the straight-side dock at the Stateline Terminal representing a combined 14,850 square feet of roadway.

~~47~~ 16. Settling Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. The Settling Defendant may use contractors and/or consultants in planning and implementing the SEP.

~~48~~ 17. With regard to the SEP, Settling Defendant certifies the truth and accuracy of each of the following:

- a. That to the best of Settling Defendant’s knowledge, a reasonable and good faith estimate of the cost of the Truck Loadout Shed portion of the SEP is \$342,042, and a reasonable, good faith estimate of the cost of the Road Paving

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portion of the SEP is \$44,550, for a total estimate of cost of \$386,592.

(hereinafter, “estimated cost of the Truck Loadout Shed/Road Paving SEP”);

b. That, as of the date of this Decree, Settling Defendant is not required to perform or develop the Truck Loadout Shed/Road Paving SEP by any federal, state, or local law or regulation, nor is Settling Defendant required to perform or develop the Truck Loadout Shed/Road Paving SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That Settling Defendant has not received, and is not negotiating to receive, credit for the Truck Loadout Shed/Road Paving SEP in any other enforcement action; and

d. That Settling Defendant will not receive any reimbursement for the costs of any portion of the Truck Loadout Shed/Road Paving SEP from any other person.

18. Truck Loadout Shed/Road Paving SEP Completion Report.

a. Within thirty (30) days after Settling Defendant concludes that it has fully implemented the Truck Loadout Shed/Road Paving SEP in accordance with the requirements of this Decree, Settling Defendant shall submit a Truck Loadout Shed/Road Paving SEP Completion Report to the United States, in accordance with Section XVI of this Consent Decree (Notices). The Truck Loadout Shed/Road Paving SEP Completion Report shall contain the following information:

i. A detailed description of the Truck Loadout Shed/Road Paving SEP as implemented;

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- ii. A description of any problems encountered in completing the Truck Loadout Shed/Road Paving SEP and the solutions thereto;
- iii. An itemized list of all Truck Loadout Shed/Road Paving SEP costs and acceptable evidence of such costs. For purposes of this Paragraph, “acceptable evidence” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts do not constitute acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made;
- iv. Certification that the Truck Loadout Shed/Road Paving SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. A description of the environmental and public health benefits resulting from implementation of the Truck Loadout Shed/Road Paving SEP (with a quantification of the benefits and pollutant reductions, if feasible

~~20~~ 19. ~~Settling Defendant bears the burden of clearly segregating eligible Truck Loadout Shed/Road Paving SEP costs from other costs not eligible for Truck Loadout Shed/Road Paving SEP credit. Any unsegregable cost evidence that contains both Truck Loadout Shed/Road Paving SEP eligible and non-Truck Loadout Shed/Road Paving SEP eligible cost items shall be disallowed in its entirety.~~ Each submission required under Paragraph ~~19~~ 18 shall be signed by an official with knowledge of the Truck Loadout

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Shed/Road Paving SEP and shall bear the certification language set forth in Paragraph ~~26~~ **25**, below. EPA may, ~~in its sole discretion, require~~ **request** information in addition to that described in Paragraph ~~19~~ **18** in order to determine the adequacy of Truck Loadout Shed/Road Paving SEP completion or ~~eligibility of~~ **verify the** Truck Loadout Shed/Road Paving SEP costs **incurred**. Settling Defendant shall provide such information requested by EPA.

~~24~~ **20**. Settling Defendant hereby agrees that the estimated cost of the Truck Loadout Shed/Road Paving SEP in Paragraph 18.a., above, does not include any estimated savings from deducting the cost of the Truck Loadout Shed/Road Paving SEP for federal and state tax purposes and any that funds expended by Settling Defendant in the performance of said Truck Loadout Shed/Road Paving SEP shall not be deductible for purposes of such taxes. At the time of completion of the Truck Loadout Shed/Road Paving SEP, Settling Defendant shall submit to the United States written certification that any funds expended in the performance of said Truck Loadout Shed/Road Paving SEP have not been and will not be deducted for purposes of such taxes.

~~22~~ **21**. Within thirty (30) days after receipt of the Truck Loadout Shed/Road Paving SEP Completion Report (unless the United States notifies Settling Defendant that additional time is required), the United States shall notify Settling Defendant whether or not Settling Defendant has satisfactorily completed the Truck Loadout Shed/Road Paving SEP. Disputes concerning the satisfactory completion of the Truck Loadout Shed/Road Paving SEP may be resolved under Section XI of this Decree (Dispute Resolution).

~~23~~ **22**. Any public statement, oral or written, in print, film, or other media, made by Settling Defendant making reference to the Truck Loadout Shed/Road Paving SEP

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under this Decree shall include the following language, “This project was undertaken in connection with the settlement of an enforcement action, United States v. S.H. Bell Co., (N.D. Ohio) taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.”

VIII. REPORTING REQUIREMENTS

~~24~~ **23.** Settling Defendant shall submit the following reports:

a. Within thirty (30) days after the end of each six month period (“**semi-annual**” period) following the date of lodging of this Consent Decree, until termination of this Decree pursuant to Section XX, Settling Defendant shall submit to the United States a semi-annual report for the preceding semi-annual period that shall include: 1) a progress report on the status of the FESOP applications for the Stateline Terminal and the minor facility operating permit application for the Little England Terminal as addressed in Paragraph ~~13~~ **12**, and the status of continuing compliance with Paragraph ~~14~~ **13** of Section V above; and 2) a discussion of Settling Defendant’s progress in satisfying its obligations in connection with the installation of the Truck Loadout Shed/Road Paving SEP under Section VII of this Decree, including a narrative description of activities undertaken and an itemization (with copies of supporting documentation) of costs incurred since the previous report.

b. If Settling Defendant violates any requirement of this Consent Decree , Settling Defendant shall notify the United States of such violation and its likely duration in writing within ten (10) working days of the day Settling Defendant first becomes aware of the violation, with an explanation of the

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violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Settling Defendant shall include a statement to that effect in the report. Settling Defendant shall immediately investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) days of the day Settling Defendant becomes aware of the cause of the violation.

~~25~~ **24.** All reports shall be submitted to the persons designated in Section XVI of this Consent Decree (Notices).

~~26~~ **25.** Each report submitted by Settling Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

~~27~~ **26.** Settling Defendant shall retain all underlying documents from which it has compiled any report or other submission required by this Consent Decree until five years after termination of the Decree.

~~28~~ **27.** The reporting requirements of this Consent Decree do not relieve Settling Defendant of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, or requirement.

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~~29~~ 28. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

IX. STIPULATED PENALTIES

~~30~~ 29. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in this Section to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section X (Force Majeure). “Compliance” shall include completion of the activities under this Consent Decree, or any work plan or other plan approved under this Consent Decree, in accordance with all applicable requirements of this Consent Decree, and within the specified time schedules established by and approved under this Consent Decree. “Compliance” shall also include payment of the civil penalty, meeting the reporting requirements of this Consent Decree, and the applicable requirements of the SEP, as set forth in Section VII.

~~34~~ 30. Compliance Milestones

a. The following stipulated penalties shall accrue per violation per day for any failure to meet any of the requirements identified in Subparagraph b and c:

Penalty Per Violation Per Day	Period of Noncompliance
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

b. Payment of the civil penalty under this Consent Decree.

c. Noncompliance with the compliance measures in Paragraphs ~~43~~

~~12~~ and ~~44~~ 13 of Section V.

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~~32~~ **31.** Reporting Requirements. The following stipulated penalties shall accrue per violation per day for any noncompliance with the reporting requirements of Section VIII of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$500 250	1st through 14th day
\$1,000 500	15th through 30th day
\$2,000 1,000	31st day and beyond

~~33~~ **32.** SEP Compliance

a. In the event that Settling Defendant's actual, ~~eligible~~ **incurred** expenditures spent in connection with performance of the SEP described in Section VII of this Consent Decree (Supplemental Environmental Project) total less than ninety (90) percent of the estimated cost of the SEP as set forth in Paragraph ~~48~~ **17.a.**, above, Settling Defendant shall be liable for stipulated penalties, as set forth below. Such penalties shall accrue from the date set for completion of the SEP under Section VII of this Consent Decree, in the case of penalties pursuant to Paragraph ~~33~~ **32.a.i.**, below, or from the date of notification by the United States that the SEP has not been satisfactorily completed, in the case of penalties pursuant to Paragraph ~~33~~ **32.a.ii.**, below. Where Settling Defendant has halted or abandoned completion of the SEP, such penalties shall accrue from the date set for completion of the SEP.

i. If Settling Defendant has satisfactorily completed the SEP, Settling Defendant shall pay stipulated penalties at the rate of 20 percent for every one dollar (\$1) that Settling Defendant's total ~~eligible~~ **incurred**

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costs are less than the total estimated cost of the SEP, as set out in Paragraph 18.a., above.

ii. If Settling Defendant has not satisfactorily completed the SEP, Settling Defendant shall pay stipulated penalties at the rate of 80 percent for every one dollar (\$1) that Settling Defendant's total ~~eligible~~ **incurred** costs are less than the total estimated costs of the SEP, as set forth in Paragraph ~~18~~ **17**.a, above

b. If the SEP is satisfactorily completed, but not in accordance with the schedule set forth in Section VII of this Consent Decree, Settling Defendant shall pay stipulated penalties for failure to meet the milestones set out in Appendix A to this Consent Decree, as follows:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,000 500	1st through 14th day
\$1,500 1,000	15th through 30th day
\$2,000	31st day and beyond

Such penalties shall accrue from the date each such milestone was to have been met and shall be in addition to any stipulated penalties due under Paragraph ~~33~~ **32**.a., above.

c. If Settling Defendant has spent at least ninety percent (90 percent) of the estimated cost of the SEP, Settling Defendant shall not be liable for any stipulated penalty, if (1) the SEP is satisfactorily completed, or (2) the SEP is not satisfactorily completed, but Settling Defendant has made good faith and timely efforts to complete the project and certifies with supporting documentation, no later than thirty (30) days after the date set for completion of

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the SEP under Section VII of this Consent Decree, that Settling Defendant expended at least 90 percent of the estimated cost of the SEP.

d. In the event that the SEP is not satisfactorily completed and the Settling Defendant (1) has not made good faith and timely efforts to complete the project, or (2) does not provide the certification and documentation required by this Subparagraph, Settling Defendant will be deemed to be in violation of this Consent Decree and shall pay a penalty of ~~15% of the total estimated costs of the SEP in the manner specified in Paragraph 35, below, in addition to a civil penalty mitigation amount of \$150,000,~~ **plus Interest at the rate established by the Secretary of Treasury pursuant to 28 U.S.C. 1961 from the Effective Date of the Consent Decree through the payment date in addition to any stipulated penalties due under Paragraph 32, above.**

~~34~~ **33.** Any payment due pursuant to Paragraph ~~33~~ **32.a.ii., and 32.d.,** above, shall be made in the manner set forth in Section IV of this Consent Decree (Civil Penalty), except that the transmittal letter shall also reference that payment is being made pursuant to this Paragraph.

~~35~~ **34.** All stipulated penalties must be paid within thirty (30) days of the date that Settling Defendant receives a written demand for payment from the United States. Except as provided in Paragraph ~~34~~ **33,** above, stipulated penalties shall be paid by certified or cashier's check in the amount due, payable to the "Treasurer, United States of America," referencing DOJ No. 90-5-2-1-07823 and United States Attorney's Office file number [], and shall be delivered to the office of the United States Attorney,

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Northern District of Ohio, Financial Litigation Unit, United States Courthouse, 801 W. Superior Avenue, Suite 400, Cleveland, OH 44113.

~~36~~ **35.** Subject to the provisions of Paragraph ~~33~~ **32.a.**, above, all stipulated penalties shall begin to accrue on the day after the **date** performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree, except that when two or more violations are based upon the same noncompliance, the higher stipulated penalty shall apply. Interest shall accrue on overdue penalty payments (those not made within 30 days of receipt of the written demand for payment from the United States) at the rate established by the Secretary of the Treasury pursuant to 28 U.S.C. § 1961.

~~37~~ **36.** Penalties shall continue to accrue as provided in accordance with Paragraph ~~36~~ **35** during any dispute resolution, with Interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, accrued penalties determined to be owing, together with accrued Interest, shall be paid to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order;
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Settling Defendant shall, within sixty (60) days of

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receipt of the Court's decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued Interest, except as provided in Subparagraph c, below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued penalties determined to be owing to the United States, together with accrued Interest.

~~38~~ 37. Should Settling Defendant fail to pay stipulated penalties and accrued Interest in accordance with the terms of this Consent Decree, the United States shall be entitled to collect Interest, as set forth in Paragraph ~~37~~ 36, above, together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties, ~~and Interest, or late payment costs or fees.~~

~~39~~ 38. Settling Defendant's payment of stipulated penalties under this Section shall be in addition to any other rights or remedies available to the United States by reason of Settling Defendant's failure to comply with any requirement of this Consent Decree or applicable law.

X. FORCE MAJEURE

~~40~~ 39. "Force majeure, " for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, its contractors, or any entity controlled by Settling Defendant that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. "Best efforts" include using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b)

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after it has occurred, such that the delay is minimized to the greatest extent possible.

“Force Majeure ” does not include Settling Defendant’s financial inability to perform any obligation under this Consent Decree.

~~41~~ 40. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which Settling Defendant intends to assert a claim of force majeure, Settling Defendant shall provide notice in writing, as provided in Section XVI of this Consent Decree (Notices), within seven (7) days of the time Settling Defendant first knew of, or by the exercise of due diligence should have known of, the event and its likelihood of delaying Settling Defendant’s performance of its obligations under this Consent Decree. Such notification shall include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and Settling Defendant’s rationale for attributing such delay to a force majeure event. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, its contractors, or any entity controlled by Settling Defendant knew or should have known.

~~42~~ 41. Settling Defendant shall have the burden of proving, by a preponderance of the evidence, that each event described in the preceding Paragraph was a force majeure event; that Settling Defendant gave the notice required by the preceding Paragraph; that Settling Defendant took all reasonable steps to prevent or minimize any delay caused by

the event; and that any period of delay it claims was attributable to the force majeure event was caused by that event.

~~43~~ 42. If the Parties agree that Settling Defendant could not have prevented or mitigated any delay, or anticipated delay, attributable to a force majeure event by the exercise of due diligence, the Parties shall stipulate to an extension of time for Settling Defendant's performance of the affected compliance requirement by a period not exceeding the delay actually caused by such event. In such circumstances, the appropriate modification shall be made pursuant to Section XIX of this Consent Decree (Modification), where the modification is to a term of this Consent Decree {or is a material modification of any Appendix to this Consent Decree}. In the event the Parties cannot agree, the matter shall be resolved in accordance with Section XI of this Consent Decree (Dispute Resolution). An extension of time for performance of the obligations affected by a force majeure event shall not, of itself, extend the time for performance of any other obligation.

XI. DISPUTE RESOLUTION

~~44~~ 43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

~~45~~ 44. Informal Dispute Resolution. Any dispute which arises under or with respect to this Consent Decree shall first be the subject of informal negotiations. The period of informal negotiations shall not exceed (forty-five) 45 days from the time

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Settling Defendant sends the United States a written Notice of Dispute in accordance with Section XVI of this Consent Decree (Notices), unless that period is modified by written agreement. Such Notice of Dispute shall state clearly the matter in dispute. The failure to submit a Notice of Dispute within ten (10) days from the date upon which the issue in dispute arises waives Settling Defendant's right to invoke dispute resolution under this Section.

~~46~~ **45**. Formal Dispute Resolution.

a. If the Parties cannot resolve a dispute by informal negotiations pursuant to the preceding Paragraph, then the position advanced by the United States shall be considered binding unless, within 21 days after the conclusion of the informal negotiation period, Settling Defendant invokes formal dispute resolution procedures by serving on the United States, in accordance with Section XVI of this Consent Decree (Notices), a written Statement of Position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, ~~together with a statement indicating whether formal dispute resolution should proceed upon the administrative record.~~

b. Within 21 days after receipt of Settling Defendant's Statement of Position, the United States will serve on Settling Defendant its Statement of Position, including any supporting factual data, analysis, opinion or documentation, ~~together with a statement indicating whether formal dispute resolution should proceed upon the administrative record.~~ Within

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15 days after receipt of the United States' Statement of Position, Settling Defendant may submit a Reply.

c. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. That record shall constitute the administrative record upon which the matter in dispute is to be resolved, ~~when such resolution proceeds on the administrative record under this Section.~~

d. ~~If there is disagreement as to whether dispute resolution should proceed upon the administrative record, the Parties shall follow the procedures determined by the United States to be applicable. However, if~~
If Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine the applicable standard and scope of review, in accordance with Paragraph ~~47~~ **46**.c., below.

~~47~~ **46**. Resolution of Disputes.

a. The Director of the Air and Radiation Division, EPA Region 5, will issue a final decision resolving the matter in dispute. Where the dispute pertains to the performance of the Compliance Requirements under Section V of this Consent Decree or performance of the SEP under Section VII, or is otherwise accorded review on the administrative record under applicable principles of administrative law, the decision shall be upon the administrative record maintained by EPA pursuant to Paragraph ~~46~~ **45**.c., above. The decision of the Air and Radiation Division Director

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shall be binding upon Settling Defendant, subject only to the right to seek judicial review, in accordance with Subparagraph b, below.

b. The decision issued by EPA under Subparagraph a, above, shall be reviewable by this Court upon a motion filed by Settling Defendant and served upon the United States within ~~24~~ **thirty (30)** days of receipt of EPA's decision. In addition to containing the supporting factual data, analysis, opinion, and documentation upon which Settling Defendant relies, the motion shall describe the history of the matter in dispute, the relief requested, and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree, as well as Settling Defendant's position on whether the dispute should be resolved on the administrative record. The United States' response will be filed within 30 days of the filing of Settling Defendant's motion. Settling Defendant may file a reply within 14 days of the United States' response.

c. In any judicial proceeding pursuant to Subparagraph b, above, that concerns the performance of the Compliance Requirements under Section V of this Consent Decree or performance of the SEP under Section VII, or that is otherwise accorded review on the administrative record under applicable principles of administrative law, Judicial review shall be on the administrative record compiled in accordance with Paragraph ~~46~~ **45.d**, above. Settling Defendant shall have the burden of demonstrating that the decision of the Director of the Air and Radiation Division is arbitrary and

capricious or otherwise not in accordance with law. Judicial review for all other disputes shall be governed by applicable principles of law.

~~48~~ 47. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph ~~37~~ 36, above. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. RIGHT OF ENTRY

~~49~~ 48. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Settling Defendant or its representative, contractors, or consultants; and
- d. assess Settling Defendant's compliance with this Consent Decree.

~~50~~ 49. This Consent Decree in no way limits or affects any right of entry and inspection held by the United States pursuant to applicable federal or state laws, regulations, or permits.

XIII. FAILURE OF COMPLIANCE

~~54~~ 50. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Settling Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act and the Ohio SIP and Pennsylvania SIP. Notwithstanding the United States' review and approval of any documents submitted to it by Settling Defendant pursuant to this Consent Decree, Settling Defendant shall remain solely responsible for compliance with the terms of the Act, the Ohio SIP, the Pennsylvania SIP and this Consent Decree.

~~52~~ 51. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with applicable federal, state, or local laws or regulations. The compliance measures set forth herein do not relieve Settling Defendant from any obligation to comply with other federal or state requirements under the Act, including Settling Defendant's obligations under the Ohio SIP.

~~53~~ 52. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Settling defendant to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under state law, Settling Defendant shall make such application in a timely manner. The EPA will use its best efforts, to expeditiously review or insure the expeditious review, as

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applicable, of all permit applications submitted by Settling Defendant in order to meet the requirements of this Consent Decree.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

~~54~~ **53.** This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree.

~~55~~ **54.** This Consent Decree shall not be construed to prevent or limit the right of the United States to obtain penalties or injunctive relief under the Act, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

~~56~~ **55.** Settling Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State and local laws, regulations, and permits; and Settling Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits.

~~57~~ **56.** This Consent Decree does not apply to any claims of alleged criminal liability.

~~58~~ **57.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief or civil penalties relating to the facilities **and alleging claims not** covered by the Complaint in this action, settling Defendant shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by Plaintiff in the subsequent proceeding were brought, or should have been brought in the instant case; provided however, that nothing in this

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Paragraph is intended to, or shall affect the validity of Paragraph 54 of this Consent Decree.

~~59~~ 58. This Consent Decree does not limit or affect the rights of Settling Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Settling Defendant.

~~60~~ 59. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

~~61~~ 60. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein.

XV. COSTS

~~62~~ 61. Each of the Parties shall bear its own costs of litigation of this action, including attorneys fees, except as provided in Paragraphs ~~44~~ 10 and ~~38~~ 37, above.

XVI. NOTICES

~~63~~ 62. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U. S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-07823

And

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[name]
Office of the United States Attorney
Northern District of Ohio
801 West Superior Avenue, Suite 400
Cleveland, Ohio 44113

And

[name]
U. S. Environmental Protection Agency Region 5
77 West Jackson Blvd.
Chicago, IL 60604

To Settling Defendant:

~~John M. Bell~~
S.H. Bell Company
Attn: John M. Bell
644 Alpha Drive
PO Box 11495
Pittsburgh, PA 15238

~~64~~ **63.** Notices submitted pursuant to this Section shall be deemed effective upon receipt, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVII. EFFECTIVE DATE

~~65~~ **64.** The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVIII. RETENTION OF JURISDICTION

65. Continuing Jurisdiction. The Court retains jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification, and/or to resolve disputes between the parties as provided in Section X (Force Majeure) and Section XI (Dispute Resolution) provisions of

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this Consent Decree. During the term of this Consent Decree, any Party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XIX. MODIFICATION

~~67~~ 66. Modification. There shall be no modification of this Consent Decree without written agreement of the United States and Settling Defendant. There shall be no material modification of this Consent Decree without the written agreement of the United States and Settling Defendant and by Order of the Court.

XX. TERMINATION

~~68~~ 67. After Settling Defendant has: (1) paid the Civil Penalty, (2) paid any accrued stipulated penalties and Interest, (3) fulfilled the requirements of this Consent Decree related to the SEPs and/or paid any stipulated penalties required by the SEP provisions, including those related to the SEPs, ~~and (4) maintained continuous compliance for a period of two years with the~~ **obtained final, valid** permits issued by Ohio EPA and Pennsylvania DEP pursuant to Settling Defendant's pending FESOP and minor source permit applications, **and (5) maintained continuous compliance with the emissions limitations in the permits for a period of two years,** Settling Defendant may serve upon the United States a Request for Termination, stating that Settling Defendant has satisfied those requirements, together with all necessary supporting documentation.

~~69~~ 68. Following receipt by the United States of Settling Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Settling Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United

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States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

~~70~~ 69. If the United States does not agree that the Decree may be terminated, Settling Defendant may invoke Dispute Resolution under Section XI of this Decree. However, Settling Defendant shall not seek Dispute Resolution of any dispute regarding termination under Section XI of this Consent Decree until 30 days after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

~~71~~ 70. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to entry of this Consent Decree without further notice.

XXII. SIGNATORIES/SERVICE

~~72~~ 71. Each undersigned representative of Settling Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

~~73~~ 72. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

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~~74~~ **73.** Settling Defendant hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified settlement Settling Defendant in writing that it no longer supports entry of the Decree.

~~75~~ **74.** Settling Defendant hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION/APPENDICES

~~76~~ **75.** This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written. Other than the Appendices, which are attached to and incorporated in this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIV. FINAL JUDGMENT

~~77~~**76.** Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and Settling Defendant.

XXV. APPENDICES

77. The following appendices are attached to and incorporated into this

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Consent Decree:

“Appendix A ” is the Supplemental Environmental Project;

Dated and entered this day of , 2007.

UNITED STATES DISTRICT JUDGE
Northern District of Ohio

FOR THE UNITED STATES OF AMERICA:

MATTHEW J. MCKEOWN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

FRANCIS J. BIROS
Trial Attorney
Environmental Enforcement Section Environment
and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

GREGORY A. WHITE
United States Attorney
Northern District of Ohio

STEVEN PAFFILAS
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801 West Superior Avenue, Suite 400
Cleveland, Ohio 44113
(216) 622-3698

FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:

MARY GADE
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

JOHN MATSON
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

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FOR DEFENDANT, S.H. BELL, ~~INC.~~
COMPANY:

Signature: _____

Typed Name: Title:
Address:

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: Title:
Address: